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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/01/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/842,372

Applicant(s)

Breidenbach et al.

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 18, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Apr 25, 2001 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second section of the sleeve being “threaded so that they are adapted to receive a threaded end of a receptacle”, as called for by claim 33, must be shown or the features canceled from the claims. No new matter should introduced or it will not be entered.

A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to because: (A) in Fig. 1D, a lead line is lacking for reference character 18; and (B) Fig. 10 fails to properly show the lip product (designated as 47) in proper cross section as required by 37 CFR 1.84(h)(3). A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “51” has been used to designate both the lip applicator (note line 15 on page 12) and the applicator surface (note line 21 on page 12). A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) **mentioned** in the description: **49** (note line 18 on page 12). A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference signs **not mentioned** in the description: **46** and **4.944** in Fig. 10. A proposed drawing correction or amendment to the specification to add the reference signs in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. Applicant is required to submit a proposed drawing correction **in reply to this Office action**. Any proposal by the applicant for amendment of the drawing to cure defects **MUST** be embodied **in a SEPARATE LETTER to the Draftsman**. See MPEP §608.02(r).

Claim Objections

7. The numbering of the claims is not in accordance with 37 CFR 1.75(f) which requires that if there are several claims, they shall be numbered consecutively. The originally filed claims contain two sets of claims 13, 14 and 15. Hence, the claims beginning with the second set of claims 13-15 and the claims which follow, i.e., claims 16-30, are misnumbered. To expedite prosecution, the following claims **have been renumbered** as follows:

Misnumbered claim 13 (second set) has been renumbered as claim 16.

Misnumbered claim 14 (second set) has been renumbered as claim 17 and made dependent from claim 16 in lieu of claim 13.

Misnumbered claim 15 (second set) has been renumbered as claim 18.

Misnumbered claim 16 has been renumbered as claim 19.

Misnumbered claim 17 has been renumbered as claim 20.

Misnumbered claim 18 has been renumbered as claim 21.

Misnumbered claim 19 has been renumbered as claim 22.

Misnumbered claim 20 has been renumbered as claim 23.

Misnumbered claim 21 has been renumbered as claim 24.

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Misnumbered claim 22 has been renumbered as claim 25.

Misnumbered claim 23 has been renumbered as claim 26.

Misnumbered claim 24 has been renumbered as claim 27 and made dependent from claim 26 in lieu of claim 23.

Misnumbered claim 25 has been renumbered as claim 28 and made dependent from claim 26 in lieu of claim 23.

Misnumbered claim 26 has been renumbered as claim 29 and made dependent from claim 26 in lieu of claim 23.

Misnumbered claim 27 has been renumbered as claim 30.

Misnumbered claim 28 has been renumbered as claim 31.

Misnumbered claim 29 has been renumbered as claim 32.

Misnumbered claim 30 has been renumbered as claim 32 and made dependent from claim 32 in lieu of claim 29.

Hence, claims 1-33 are present in this application and will be thus referred to in the remainder of this Office action. No further action is needed by applicant since these **changes have already been made**. Any amendments to the claims made in response to this Office action should reflect the new claim numbering.

Specification

8. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said", should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

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The language should be clear and concise and should not repeat information given in the title. It **should avoid using phrases which can be implied, such as, "The disclosure concerns", "The disclosure defined by this invention", "The disclosure describes", etc.**

9. The abstract of the disclosure is objected to because it uses a phrase which can be implied, i.e., "is disclosed". Correction is required. See MPEP § 608.01(b).

10. The specification is not in proper idiomatic English and has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

11. The following informalities in the specification are noted: (A) on page 1, line 5, the "blank" should be deleted and the proper information should be provided; (B) on page 7, line 16, the particular "section" should be designated, i.e., 14 or 15; (C) on page 7, line 22, --12 and 13-- should be inserted after "ends"; (D) on page 8, line 1, "12 and 13" should be changed to --11--; --19-- should be inserted after "end", and "19" (after "caps") should be deleted; (E) on page 8, line 11, "line.." should read --line.--; (F) on page 8, line 12, a comma should be inserted directly after "relation"; (G) on page 9, line 6, "22" should be changed to read --22 and 28--; (H) on page 9, line 15, the period after "mascara" should be changed to a comma; (I) on page 9, line 21, a comma should be inserted directly after "liner"; (J) on page 10, line 2, a comma should be inserted directly after "e."; (K) on page 10, line 17, a comma should be inserted directly after "cream"; (L) on page 11, line 3, a comma should be inserted directly after "cream"; (M) on page 11, line 6, a comma should be inserted directly after "polish"; (N) on page 11, line 11, "shaft.In" should read --shaft. In--; and (O) on page 11, line 12, the period after "mascara" should be changed to a comma. Appropriate correction is required.

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12. The following informalities in the claims are noted: (A) in claim 29, on line 2, “container” should be deleted; and (B) in claim 33, on line 4, --respective-- should be inserted before “receptacle”. Appropriate correction is required.

Claim Rejections - 35 USC § 112

13. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

14. Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 6 calls for (a) the center axis of the sleeve, cap/cover and lip applicator to be the same, and (b) the lip applicator to have a center axis that is the same center axis as the sleeve and cap/cover. However, the specification only provides support for the center axis of the sleeve and the center axis of each cap to be lined up in a generally straight line (note lines 8-11 on page 8).

15. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to provide support for “the portion of the cover . . . where there is a thread on the interior thereof forming a band around said cover”, as called for by claim 7.

16. Claims 23 and 24 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the eye product in the second receptacle (note claim 11) to be applied by a rollerball arrangement (note lines 15-17 on page 9 and lines 12-13 on page 11) or a brush (note lines 12-13 on page 6), does not reasonably provide enablement for the applicator to constitute both

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a brush and roller ball (claim 23) or a brush and doe foot (claim 24). The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

17. Claims 19-25 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for facial products such as powders, creams, concealers, blemish control materials, etc. (note lines 8-9 on page 9) and eye products in the form of mascara and eye liner (note line 15 on page 9 and line 11 on page 11) does not reasonably provide enablement for an eye product that is in the form of powder, cream, concealer, blemish control material and facial product, as called for by claims 19-25 (which depend from claim 11 which calls for the product in the second receptacle to be an eye product). The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

18. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

19. Claims 4-7, 23-25 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

20. Claims 4-6 contain a term lacking proper antecedent basis. The claims recite the limitation "the cover" in line 1 of claims 4 and 5, and in line 2 of claim 6. There is insufficient antecedent basis for this limitation in these claims.

21. Claim 7 contains terms lacking proper antecedent basis. The claim recites the limitations "the cover" in line 1, "the portion of the cover . . . where there is a thread on the interior thereof" in lines 1-2, and "said cover" in lines 2-3. There is insufficient antecedent basis for these limitations in the claim.

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22. Claims 23-25 contain a term lacking proper antecedent basis. The claims recite the limitation "the facial product" in line 2. There is insufficient antecedent basis for the limitation in these claims.
23. Claim 31 contains a term lacking proper antecedent basis. The claim recites the limitation "the receptacles" in line 1. There is insufficient antecedent basis for the limitation in the claim.
24. Claim 25 is indefinite since it is redundant of claim 15 (which already recites a brush) and does not further limit claim 15.

Claim Rejections - 35 USC § 102

25. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

26. Claims 1, 2, 4, 6, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Hillelson. Hillelson discloses a dual ended container having all the claimed features including a sleeve (constituted by hub 11) having a first end and a second end, the first end being adapted to receive a receptacle (constituted by storage tube 23) that contains a product, the second end being adapted to receive a receptacle (constituted by sleeve 20) having a lip product applicator (constituted by lipstick 14) extending therefrom, and the lip product applicator being adapted to receive a cap 21

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(note Fig. 1). With respect to claims 2 and 33, Hillelson also discloses that the first and second ends of the sleeve 11 are threaded (note Figs. 2-4 and lines 43-54 in col. 3). With regard to claim 4, Hillelson further discloses that the sleeve 11, the cap 21 and the receptacle 23 have a cross section of the same shape (note Fig. 2). With regard to claim 6, Hillelson additionally discloses that the center axis of the sleeve 11, the cap 21 and the receptacle 23 is the same (note Fig. 2 and lines 36-37 in col. 1).

27. Claims 1, 3-6 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kendall. Kendall discloses a dual ended container having all the claimed features including a sleeve (constituted by body 1) having a first end and a second end, the first end being adapted to receive a receptacle (constituted by retaining member 5) that contains a product 10, the second end being adapted to receive a receptacle (constituted by a second retaining member 5) having a lip product applicator 10 (note lines 9-19 on page 1) extending therefrom, and the lip product applicator 10 being adapted to receive a cap 2 (note Figs. 1 and 2). With respect to claim 3, Kendall also discloses that the product contained in the receptacle 5 is a cosmetic product (note lines 9-19 on page 1). With regard to claim 4, Kendall further discloses that the sleeve 1, the cap 2 and the receptacle 5 have a cross section of the same shape (note Fig. 1). With respect to claim 5, Kendall additionally discloses that the sleeve 1, the cap 2 and the receptacle 5 each have a cross section of the same size (note Figs. 1 and 2). With regard to claim 6, Kendall also discloses that the center axis of the sleeve 1, the cap 2 and the receptacle 5 is the same (note Figs. 1 and 2). With regard to claim 11, Kendall further discloses that the product in the receptacle 5 is an eye product (note lines 9-19 on page 1).

28. Claims 1-6, 31 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Lang. Lang discloses a dual ended container having all the claimed features including a sleeve 10 having a first end and a second end (note lines 23-24 in col. 3), the first end being adapted to receive a receptacle (constituted by barrel 42) that contains a product, the second end being adapted to receive

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a receptacle (constituted by barrel 22) having a lip product applicator (note lines 37-39 in col. 2 and lines 48-52 in col. 4) extending therefrom, and the lip product applicator being adapted to receive a cap or closure (32, 52) (note Figs. 1-4). With respect to claim 2, Lang also discloses that the end of the sleeve 10 is threaded so that it is adapted to receive the threaded end (neck 24) of the receptacle 22 (note lines 55-58 in col. 3 and Fig. 1). With regard to claim 3, Lang further discloses that the product contained in the receptacle is a cosmetic product (note lines 37-39 in col. 2 and lines 48-52 in col. 4). With respect to claim 4, Lang further discloses that the sleeve 11, the cap 21 and the receptacle 23 have a cross section of the same shape (note Fig. 2). With respect to claim 5, Lang further discloses that the sleeve 10, the cap (32, 52) and the receptacle (42, 22) each have a cross section of the same size (note Figs. 1-5 and 7). With regard to claim 6, Lang additionally discloses that the center axis of the sleeve 10, the cap (32, 52) and the receptacle (42, 22) is the same (note Figs. 1-5 and 7). With respect to claim 31, Lang further discloses both receptacles (42, 22) contain lip products (note lines 48-52 in col. 4).

Claim Rejections - 35 USC § 103

29. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

30. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Dulberg. Although Lang discloses that only one end of the sleeve is provided with a threaded closure (32), attention is directed to Dulberg who discloses another dual ended container having both caps 1 and 24 threaded. It would have been obvious to one of ordinary skill in the dual ended

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cosmetic container art, at the time the invention was made, to provide the sleeve 10 of Lang with caps that are both threaded in view of the teachings of Dulberg in order to prevent accidental removal of the caps especially when the cosmetic container is carried in a woman's handbag and to insure that the caps are securely attached.

31. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Coryell. Lang further discloses that many combinations of various products can be dispensed from his container (note lines 4-11 in col. 1 and lines 34-43 in col. 2). Although Lang fails to specifically disclose that the product can contain a fragrance or perfume, attention is directed to Coryell who discloses another dual ended container wherein the liquid being dispensed in the liquid/lipstick container is perfume. It would have been obvious to one of ordinary skill in the dual ended cosmetic container art, at the time the invention was made, to provide the roll-on assembly of Lang with liquid perfume in view of the teachings of Coryell in order to provide a composite container that carries two of the most oftenly used cosmetic products that women carry in their handbags since both lipstick and perfume are often generally renewed during the course of a day.

32. Claims 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Moriber et al. Lang further discloses that many combinations of various products can be dispensed from his container (note lines 4-11 in col. 1 and lines 34-43 in col. 2). Although Lang fails to specifically disclose that the product can contain an eye product, attention is directed to Moriber et al. who disclose another dual ended container wherein the products dispensed in the container are a lipstick and an eye product in the form of eye liner (note lines 43-49 in col. 3). It would have been obvious to one of ordinary skill in the dual ended cosmetic container art, at the time the invention was made, to provide the dual ended container of Lang with a lipstick and an eye product in the form of eye liner in view of the teachings of Moriber et al. in order to reduce the number of cosmetic containers that are carried by women in their handbags and to provide a

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composite container that carries two renewable, touch-up cosmetic products that women often carry in their handbags since both eye products and lipstick are most frequently touched-up during the course of a day. With regard to claim 14, Lang further disclose the use of a roller ball applicator 28.

33. Claims 13 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Moriber et al. as applied to claims 11, 12 and 14 above, and further in view of Pieper et al. Lang further discloses that many dispensing combinations can be used in his container (note lines 48-65 in col. 4). Although Lang fails to specifically disclose that the applicator can be a doe foot applicator, attention is directed to Pieper et al. who disclose another lipstick (note lines 52-54 in col. 3) applicator wherein the applicator can be one of a variety of applicators such as a doe foot (note lines 53-66 in col. 4). It would have been obvious to one of ordinary skill in the cosmetic container art, at the time the invention was made, to use as the lipstick applicator in Lang a doe foot applicator in view of the teachings of Pieper et al. in order to more accurately control the application of lipstick to the lips.

34. Claims 11, 14-17 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Younghusband. Lang further discloses that many combinations of various products can be dispensed from his container (note lines 4-11 in col. 1 and lines 34-43 in col. 2). Although Lang fails to specifically disclose that the product can contain an eye product, attention is directed to Younghusband who discloses another dual ended container wherein the liquid being dispensed in the liquid/lipstick container is an eye product in the form of mascara. It would have been obvious to one of ordinary skill in the dual ended cosmetic container art, at the time the invention was made, to provide the liquid dispenser of Lang with an eye product in the form of mascara in view of the teachings of Younghusband in order to reduce the number of cosmetic containers that are carried by women in their handbags and to provide a composite container that carries two renewable, touch-up cosmetic products that women often carry in their handbags since both mascara and lipstick are

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generally touched-up during the course of a day. With regard to claim 14, Lang also discloses a roller ball applicator 28. With respect to claims 15, 17 and 25, Younghusband further teaches the obviousness of using a brush applicator for applying the mascara.

35. Claims 26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Trabattoni in view of Ferrari. With respect to claim 26, Lang further discloses that many combinations of various products can be dispensed from his container (note lines 4-11 in col. 1 and lines 34-43 in col. 2). Although Lang fails to specifically disclose that the product can contain a nail product, attention is directed to Trabattoni who discloses another dual ended container wherein the liquid being dispensed in the liquid/lipstick container is a nail product. It would have been obvious to one of ordinary skill in the dual ended cosmetic container art, at the time the invention was made, to provide the liquid dispenser of Lang with a nail product in view of the teachings of Trabattoni in order to reduce the number of cosmetic containers that are carried by women in their handbags and to provide a composite container that carries two renewable, touch-up cosmetic products that women often carry in their handbags since both lipstick and nail varnish are required for touch-up purposes, i.e., lipstick renews the color on the lips while nail polish is used to cover up nicks received during the course of a day. With regard to claim 29, Trabattoni further teaches the obviousness of using a brush applicator 30 for applying the nail product.

36. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Trabattoni as applied to claims 26 and 29 above, and further in view of Ferrari. Although Trabbattoni fails to describe what is intended by nail varnish, attention is directed to Ferrari who discloses another nail varnish or lacquer that includes both nail polish, as called for by claim 27, and nail hardener, as called for by claim 28. It would have been obvious to one of ordinary skill in the cosmetic applicator art, at the time the invention was made, to use a nail varnish/lacquer in Lang as modified by Trabattoni in the form of nail polish, as called for by claim 27, or nail hardener, as

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called for by claim 28, in order to touch-up polished nails and/or to cover up nicks received during the course of a day.

37. Claims 18-23 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Riley et al. Lang further discloses that many combinations of various products can be dispensed from his container (note lines 4-11 in col. 1 and lines 34-43 in col. 2). Although Lang fails to specifically disclose that the product can be a facial product, powder, cream, concealer, blemish control product or cosmetic serum, attention is directed to Riley et al. who disclose other cosmetic compositions or products for topical applications wherein the cosmetic product can include creams, serums and powders (note lines 28-33 in col. 5) in the form of a facial product for concealing fine lines, wrinkles, blemishes, spots and discolorations (note lines 3-9 in col. 3) for topical use to improve a person's appearance. It would have been obvious to one of ordinary skill in the cosmetic applicator art, at the time the invention was made, to provide the roll-on assembly of Lang with a facial product, powder, cream, concealer, blemish control product or cosmetic serum in view of the teachings of Riley et al. in order to reduce the number of cosmetic containers that are carried by women in their handbags since both lipstick and cosmetic cover-up products are generally renewed or touched-up during the course of a day. With respect to claim 23, Lang further discloses a roller ball applicator 28.

38. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Costa in view of Younghusband. With respect to claim 32, Costa discloses a dual or double ended container having all the claimed features including a sleeve (constituted by base member 1) that has first and second ends with each end being adapted to receive a receptacle or members 6, 7 containing a product (note lines 24-26 in col. 1) wherein the product (eye liner) in one receptacle is different from the product (mascara) in the other receptacle (note lines 20-23 in col. 1). Although Costa discloses two different eye products in his container, attention is directed to Younghusband who discloses

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another dual or double ended container that can contain two differently shaded eye products or an eye product, such as mascara, and a lip product, such as lipstick. It would have been obvious to one of ordinary skill in the dual or double ended cosmetic container art, at the time the invention was made, to provide the container of Costa with an eye product and a lip product in view of the teachings of Younghusband in order to reduce the number of cosmetic containers that are most frequently used and carried by women in their handbags since both mascara and lipstick are generally renewed during the course of a day. With respect to claim 33, Costa also discloses that the sleeve 1 has a first section and a second section which are connected by a sidewall (note Fig. 3), and that the first section and the second section are opened at each of the ends of the sleeve 1 and threaded so that they are adapted to receive the threaded end of a respective receptacle (note Fig. 1 and lines 30-32 in col. 1).

Conclusion


39. The Examiner is advising attorneys to FAX any response due to Office actions. The U. S. Patent and Trademark Office (USPTO) is experiencing major delays in matching up papers that were mailed. Due to the Anthrax issue, any mail sent to the USPTO is automatically sent to an irradiation center in Virginia. It has been found that the irradiation process makes papers too brittle to handle. Therefore, the irradiation center has to further copy each paper. The originally filed irradiated papers are then placed in a sealed envelope and put in the associated file. After this irradiation process, the "papers" are then sent to the Office where they are matched with the file. This entire procedure causes months in delays due to the quantity of mailed received. Therefore, it is suggested that any response be sent by FAX especially if a time limit is critical. The FAX number for the technical center where this file is located is given in the paragraph below.

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40. Any inquiry concerning this communication from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044. Although the examiner participates in the maxi-flex program, she can usually be reached Monday through Friday from 5:30 AM to 2:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson, can be reached on 703-308-2580. The FAX phone number for the organization where this application is assigned is 703-308-7766.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0861.


Kathleen J. Prunner:kjp

September 28, 2002


DAVID J. WALCZAK
PRIMARY EXAMINER